

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

SHANNON BRIDGET MURPHY,

Plaintiff,

V.

CIVIL ACTION NO. 3:07-0971

CIRCUIT COURT OF CABELL
COUNTY, WEST VIRGINIA,

Defendant.

FINDINGS AND RECOMMENDATION

Shannon Bridget Murphy has filed what appears to be an appeal from a refusal by the Circuit Court of Cabell County to accept, as timely, an appeal by her from a decision of the “Cabell County West Virginia Family Court.” The case is presently pending before the Court on application and affidavit of plaintiff seeking leave to proceed in forma pauperis under the provisions of 28 U.S.C. §1915.

Examination of the application and affidavit submitted in support of the request to proceed in forma pauperis establishes that plaintiff is indigent and entitled to proceed herein without prepayment of fees. As a consequence of the fact that plaintiff proceeds in forma pauperis, and in accordance with the requirements of 28 U.S.C. §1915(e)(2)(B), however, the Court is required to dismiss a case if it determines that the action is “frivolous or malicious” or the complaint “fails to state a claim on which relief may be granted.” Examination of the complaint satisfies the Court that the latter circumstance requires dismissal of the action; however, beyond any failure to state a claim

it is apparent this Court lacks jurisdiction. District courts are, as the Court pointed out in Chicago, Rock Island & Pac. R.R. v. Stude, 346 U.S. 574, 581 (1954), courts of “original jurisdiction,” not appellate tribunals, and as a consequence are without jurisdiction “to review on appeal action taken administratively or judicially in a state proceeding.” Plaintiff’s remedy for deficiencies which she perceives in the state court proceeding is by way of appeal in the state courts, not an appeal to federal district court.

RECOMMENDATION

On the basis of the foregoing, it is **RESPECTFULLY RECOMMENDED** that plaintiff’s application to proceed in forma pauperis be granted and that her complaint, and this action be dismissed.

Plaintiff is hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., the parties may, within thirteen days from the date of filing of these Findings and Recommendation, serve and file written objections with the Clerk of this Court identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The Judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and plaintiff is advised that failure to file timely objections will result in a waiver of her right to appeal from a judgment of the district court based on such

Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and mail a copy of the same to plaintiff.

DATED: May 28, 2008



MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE